IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION NO 2520 OF 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

CHAMPAKBHAI L KIKNI

VERSUS

STATE OF GUJARAT

Appearance:

MRS DT SHAH for the Petitioner

MR MA BUKHARI AGP for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 25/07/2000

C A V JUDGMENT

#. Heard learned counsel for the parties.

#. This petition is filed by the petitioner, a licencee

for the fair price shop, against the order of the respondent No.1 under which his licence was came to be cancelled for the alleged irregularities found to be committed by him on the inspection of the shop by the officers of the respondent department.

#. It is not in dispute that for these very irregularities under the order dated 7.12.1994, the respondent No.3 suspended the licence of the petitioner for fair price shop for a period of 90 days by way of penalty. Against this order, the petitioner preferred an appeal on 15.4.1995. The same was came to be rejected by the Collector, Surat. This matter was taken up by the petitioner before the State of Gujarat by filing revision, which was accepted on 3.1.1996. Copy of the order of the State Government in the revision application is filed by the petitioner on the record of the Special Civil Application as Annexure-I.

#. For this very irregularity in the second proceedings the licence was cancelled. The learned counsel for the petitioner raised one of the contentions that once the State of Gujarat in the revision application have not found these alleged irregularities committed by the petitioner to be serious one which warrants any penalty, for these alleged irregularities a grave and serious penalty of cancellation of the licence could not have been given. In her submission once the State Government has found it to be not a case for any penalty in the proceedings initiated against the petitioner for the suspension of licence, in the second proceedings that decision was binding on the lower authorities as well as State Government. Concluding her contention Smt. D.T. Shah, learned counsel for the petitioner vehemently submitted that though this point has been raised by the petitioner before the State Government in the revision application but same has ever not been referred what to say to consider and decide by revisional authority. The learned counsel for the respondents supported the order of the authorities. From the order of the State Government impugned in this Special Civil Application Annexure-G dated 15.2.1997 I find that this point has been raised very specifically at page No.55(O), which is translation copy of the order and the relevant portion of the impugned order reads as under:-

> "If you kindly refer to the judgment of our Revision Application No.32/95, you will come to know that our explanation has been accepted by this very State Government. As such, this Revision Application is liable to be granted.

> And accordingly, till the final disposal of this application, we are eligible to be granted the stay order against the order of the District Collector for cancellation. Further, in these circumstances, when the State Government concurs with us, under the principles of natural justice, this case may be conducted soon in time so that monetary damage to us can be acoided. Because in only one inspection, under the same State Government, for the deficiencies found, for the equal replied of the applicant, for the very period, there cannot be separate judgments. If it so happens, the administrative judgments may be against the principles of natural justice".

#. The judgment given by the authority starts from page 55(P). The judgment runs in 18 pages but 16 pages are only covered for the facts, irregularities alleged to be committed by the petitioner, the explanation furnished by the petitioner and his submissions. From this order of the revisional authority, I find that while deciding the revision application this contention raised by the petitioner has even not been noticed what to say to consider and decide the same. This is clearly an error apparent on the face of the order of the revisional authority and this judgment cannot be allowed to stand. It is not gainsay whether a contention raised by the litigant is to be accepted or not is a different matter but once a contention has been raised and which is relevant to the matter before the authority it has to be considered and the authority to give its own decision thereon. Only on this ground this petition deserves to be allowed. Other contentions raised by the learned counsel for the parties need not to be referred and discussed.

In the result, this Special Civil Application succeeds and the same is allowed. The order of the State Government dated 15.2.1997 at Annexure-G dated 15.2.1997 is quashed and set aside. The revisional authority is directed to restore the revision application to its original number and decide the same afresh after giving oppotunity of hearing to all parties concerned. The Rule is made absolute accordingly. The State of Gujarat is directed to pay Rs.2,000/= towards costs of the petition to the petitioner.

(S.K.Keshote, J.)

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